IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2021

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

T.C.A.Nos.715, 721 & 722 of 2014
and
MP.Nos. 1 to 1 of 2014

The Commissioner of Income Tax,
Chennai. ... Appellant in all Tax Case Appeals

Versus

M/s. iNautix Technologies India Pvt Ltd.,
10th Floor, Tidel Park,
4, Canal Bank Road,
Taramani, Chennai – 600 113.
... Respondent in all Tax Case Appeals

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, “B” Bench, dated 09.08.2011 in I.TA.No.1054/Mds/2006, I.TA.No.2177/Mds/2010 & I.TA.No.2178/Mds/2010 against the order of the Commissioner of Income Tax (Appeals)-III, 121, Mahatma Gandhi Road, Chennai-600 034, dated 24.09.2010, ITA No.641/06-07/A.III, PAN.AAAC16177K for the Assessment Year 2004-05 and against the order of the Commissioner of Income Tax (Appeals)-III, 121, Mahatma Gandhi Road, Chennai-600 034, dated 22.09.2010, ITA No.619/09-10/A.III, PAN.AAAC16177K for the Assessment Year 2006-07 and against the order of the Commissioner of Income Tax (Appeals)-III, 121, Mahatma Gandhi Road, Chennai-600 034, dated 22.09.2010, ITA No.69/08-09/A.III, PAN.AAAC16177K for the Assessment Year 2005-06 and against the order of the Commissioner of Income Tax (Appeals)-XII, 121, Mahatma Gandhi Road, Nungambakkam, Chennai-600 034, dated 31.01.2007, ITA No.147/06-07 GI.No./PAN.AAAC16177K for the Assessment Year 2003-04 and against the order of the Assistant Commissioner of Income Tax, Company Circle-II(3), V-Floor, New Block, 121, M.G.Road, Chennai-600 034, dated 23.11.2006 G.I.No./PAN.IX6-012/AAAC16177K for the Assessment Year 2004-05 status-company, Method of Accounting-Mercantile and against the order of the Assistant Commissioner of Income Tax, Company

Circle-II(3), 121, N.H.Road, Chennai-34 dated 28.02.2006 G.I.No./PA No.IX6-012/AAAC16177K for the Assessment Year 2003-04 Status-Company, Method of Accounting-Mercantile, Nature of Business Activities – Software Development, and against the order of the Commissioner of Income Tax (Appeals)-III, 121, Mahatma Gandhi Road, Chennai-600 034, dated 17.01.2006 ITA No.188/2005-06/A.III, G.I.No./PA No.AAAC16177K for the Assessment year 2002-03 and against the order of the Assistant Commissioner of Income Tax, Company Circle-II(3), 121, N.H.Road, Chennai-34, dated 28.03.2005 G.I.No./PA.No. IX6-012/AAAC16177K for the Assessment Year 2002-03 Status-Company whether Resident/Resident Method of Accounting-Mercantile, Nature of Business Activities- Software Development.

For Appellant : Mr.Karthik Ranganathan,
Senior Standing Counsel in all cases

For Respondent : Mr.N.V.Balaji, in all cases

COMMON JUDGMENT

(Judgment was delivered by R.MAHADEVAN, J.)

These tax case appeals have been filed by the appellant / Revenue, challenging the orders dated 09.08.2011 passed by the Income Tax Appellate Tribunal, 'B' Bench, Madras, in I.TA.No.1054/Mds/2006, I.TA.No.2177/Mds/2010 & I.TA.No.2178/Mds/2010, relating to the respective assessment years 2002-03, 2004-05 & 2005-06.

2.By order dated 03.12.2014, this court admitted the aforesaid tax case appeals on the following substantial questions of law:

TCA.No.715 of 2014

"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the inclusion of foreign exchange fluctuation gain in the eligible profit for the purpose of computation of deduction under Section 10A is to be allowed even though the exchange fluctuation is only a subsequent event after the completion of the transaction and cannot partake the character of sale proceeds?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in dismissing the departmental appeal regarding that inclusion of refunds from the Central Sales tax in eligible profit for the purpose of deduction under Section 10A even though the same is not operational income and has to be excluded?

3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the loss from the provision of works station is to be treated as business loss as against the loss from other sources?"

TCA Nos.721 & 722 of 2014

"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency is to be excluded from the export turnover and also from the total turnover?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency for the technical services rendered outside India for the assessment years 2003-04, 2004-05, 2005-06 and 2006-07 is to be allowed?

3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred in foreign currency from export turnover and total turnover is to be excluded while computing deduction under Section 10A?

3.When these matters were taken up for consideration, the learned counsel for the appellant / Revenue brought to the notice of this court the Circular No.17/2019 dated 08.08.2019 issued by the Central Board Direct Taxes, wherein, it is stipulated that appeal shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore). It is also submitted that the tax effect in these appeals is less than the threshold limit.

4.In the light of the aforesaid submissions made by the learned counsel for the appellant / Revenue, the present appeals, wherein, the tax effect is said to be less than the monetary limit imposed, are dismissed as withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
   Madras, “B” Bench.

2. The Commissioner of Income Tax,
   Chennai.

3. The Assistant Commissioner of Income Tax,
   Company Circle-II(3),
   121, N.H.Road, Chennai – 34.

+1cc to M/s.N.V.Balaji, Advocate, S.R.No.66251

T.C.A.Nos.715, 721 & 722 of 2014
and
MP.Nos. 1 to 1 of 2014

AD(CO)
SU(29/12/2021)